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What is the impact of liquor licensing laws on Portland's entertainment venues? A Case Study

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Recommended Citation

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**What is the impact of liquor licensing laws on Portland's
entertainment venues?**

A Case Study

Capstone by Will Ethridge

Introduction

In January 2009, Port City Music Hall in Portland, Maine was preparing to open its doors to the public for the first time. With a capacity for nearly six hundred attendees, Port City Music Hall was designed to attract national touring acts to Portland too big for the bar scene, but not suited for the Merrill Auditorium or Cumberland Civic Center. With the State Theatre still shuttered at the time, this new venue hoped to fill an important niche in the city's creative economy, bringing a diverse array of performers that would not otherwise be able to find a viable venue in Portland.

Rob Evon, the owner of Port City Music Hall, originally conceived his business as an establishment that would be open to those 18 years of age and older, but that would also sell alcohol to its patrons of legal drinking age (i.e. 21+). In order to allow the presence of minors in his venue and still serve alcohol, it would be necessary for Port City Music Hall to be designated as an "Auditorium" licensed establishment. Title 28-A, the section of Maine State Law that deals with liquor laws and regulations, defines an "Auditorium" as follows:

*"Auditorium" means any commercially operated facility designed or used for the gathering of an audience for speeches and live performances of theater, music, dance or other performing arts, which charges a fee and which has adequate facilities for the sale and consumption of liquor."*ⁱ

An establishment that meets this definition, as determined by one of the State's liquor & licensing inspectors, can then be issued a license for the sale of spirits, wine, and malt liquor to be consumed on the premises. There are no restrictions on who can be admitted to such an establishment, except no liquor may be sold at any event primarily involving primary or secondary school children.ⁱⁱ Rob Evon leased the space for his business in April 2008 and applied for his liquor license in the same month, believing that his establishment would meet the definition for an "Auditorium", thus allowing him to admit "18+" patrons (in fact, it would allow him to host "All Ages" shows, if not for the stipulation in his lease that admittance be restricted to those "18+").

According to Mr. Evon, he received no communication from the liquor inspector until November 29th, 2008, nearly seven months after he first submitted his paperwork. An inspection of the premises was then scheduled for January 2009, a few days before Port City Music Hall's intended grand opening. However, to Mr. Evon's surprise, he was informed by the liquor inspector that his establishment did not adequately meet the definition of an "Auditorium". Consequently, Mr. Evon's original application was denied and he was forced to cancel his January 17th grand opening. Unable to forge a consensus between his legal team and the state liquor inspectors, Mr. Evon called up state senator Justin Alfond to help mediate the situation. On January 22nd, Senator Alfond met with Rob Evon for a tour of the establishment, and the next day spent several hours communicating with the state liquor inspectors to forge a solution to the stalemate. In the end, Port City Music Hall was issued a "Class A Lounge" license, and was able to reschedule its grand opening for January 24th.ⁱⁱⁱ

However, by defining Port City Music Hall as a "Class A Lounge", the venue was now forbidden from admitting minors if it chose to serve alcohol at its shows. According to Title 28-A, a Class A Lounge is defined as follows:

“Class A lounge” means a reputable place operated by responsible persons of good reputation, where food and liquor are sold at tables, booths and counters.^{iv}

Following the decision, both Rob Evon and Justin Alford stated that they were committed to eventually obtaining an “Auditorium” license for Port City Music Hall. In the meantime, it would continue to function as a 21+ venue. ^v

The Case Study

I was intrigued by this story upon first reading about the conflict in a January 2009 issue of the *Portland Phoenix*. As a fan of live music, I was highly anticipating the opening of the new venue, not only because I was excited for the great acts it would bring to Portland, but also because I believed it would help address the city’s lack of “18+” and “All Ages” venues. In a blog post about Port City’s efforts to obtain an appropriate license, Senator Alford noted the public outcry for more “18+” venues, quoting a number of constituents:

“Please continue your efforts to keep the Port City Music hall 18+. I attend roughly 40 concerts annually and, unfortunately, many of these are out of state because the bands I am interested in seeing, namely those bands who appeal to my age group, avoid the area due to the dearth of age-appropriate venues.”

“I play bass in several jazz groups as well as a funk band. Music means a lot to me, especially live. Regrettably, there are not many music venues in Portland that address my age and my musical tastes. I see Port City as a light at the end of the tunnel.”

“I am a 16 year old who would not even be able to enjoy this venue for over a year and a half. I strongly believe it would stimulate the economy and help local artists. We’ve already lost most local venues that did all ages, or would do all ages more often. Since I was 9, I’ve been going to these local shows and they’ve helped me as a person, I’ve been waiting for the day I could turn 18 and 21 so I could finally go to more shows.”^{vi}

Though I continue to find the lack of youth accessible venues in Portland troubling, I realized that the underlying issue in regards to the Port City Music Hall conflict was how the state’s liquor licensing laws affected economic development and public safety. Clearly, Rob Evon’s plan to open Port City as an “18+” venues was a business decision to tap into a lucrative demographic, largely under-served by his competitors. It also appeared that the state liquor inspectors’ decision was partly motivated out of the concern that Port City Music Hall’s configuration would hamper effective monitoring of underage drinking.

Therefore, with this capstone, I set out to closely examine the impact of the State’s liquor licensing laws on economic development and public safety, using the specific controversy at Port City Music Hall as the focus of my case study. I subsequently devised the following research questions, organized under three broad topics:

Economic Impact

1. *In general, how much annual revenue do entertainment venues lose as a result of licensing restrictions that prevent the entrance of 18-20 year old patrons?*

2. *What are the costs of complying with the law? For example, are there additional costs necessary for preventing under-age patrons from entering the venue? Are venues regularly faced with inspection and/or fines for non-compliance? Conversely, are there any savings generated by catering exclusively to a 21+ crowd (i.e. less need for enforcement personnel)?*
2a. Is underage drinking currently a concern at these venues? What steps are being taken to prevent underage patrons from entering/drinking? What are the police enforcement costs?
3. *Do current liquor licensing laws force businesses to pursue investments they would not otherwise consider?*
4. *What are the costs for maintaining a restaurant license? Are these costs considered reasonable within the context of the venue's business model?*
5. *Do entertainment venues restricted to 21+ patrons feel that they are at a competitive disadvantage with other similar businesses?*

Inspection Process & Enforcement

1. *What steps must an entertainment venue take to apply for and receive a liquor license?*
2. *How much discretion does the liquor inspector have in interpreting the liquor licensing laws?*
3. *At what point can a potential or soon-to-open venue apply for a liquor license? Is it possible to receive an inspection at an earlier date?*
4. *Do discrepancies often arise between the license a venue hopes to receive and the one they are ultimately given?*
4a. Port City Music Hall applied for an "Auditorium" license, but received a "Class A Lounge" license; According to the liquor license inspection department, what would be an example of a venue that meets the "Auditorium" license guidelines?
5. *What options do entertainment venues have for appealing decisions made by the liquor inspector?*

Legislative History

1. *What is the legislative history of Maine's liquor laws, particularly in regards to the licensing of entertainment venues?*
2. *Are Maine's liquor licensing laws primarily designed to curb incidences of under-age drinking? If not, what is the rationale behind the current formation of the laws?*
3. *Have any significant changes been made to the liquor licensing laws over the last 20 years? What effects did these changes have on entertainment venue licensing?*
4. *Is there currently any significant political pressure to reform or relax current liquor licensing laws? If so, are these efforts being instigated by entertainment venues? Conversely, are there other interests groups concerned with making the laws stricter?*
5. *How do the liquor laws of Maine compare with neighboring states? Are there significant differences?*

In order to answer these questions, I examined the relevant legislative documents pertaining to liquor licensing and conducted a number of interviews with key stakeholders. My investigation began with an interview with Rob Evon and was followed by an interview with Jeff Austin, the supervisor for Liquor Licensing & Inspection. I subsequently

interviewed state senator Justin Alford, and state representative Ann Haskell, who as House Chairman on the Committee on Criminal Justice and Public Safety is responsible for overseeing Liquor Licensing & Inspection.

I conducted additional interviews with Godfrey Woods, president of the Portland Regional Chamber, and with Portland City Councilor Dave Marshall. Additionally, I spoke with Bill Umbel, owner of the Empire Dine & Dance, a bar and music venue that, thanks to its “Restaurant” designation, is permitted to, and occasionally holds, “All Ages” shows.

For a better perspective on the implications of liquor licensing on public safety, I spoke with Jo Morrissey at 21 Reasons, an advocacy group working to prevent underage drinking. I also had the opportunity to speak with Frank Lyons, a former state liquor enforcement agent, who now runs a course on safe serving practices for the service industry. My research was rounded out with interviews with Maryann Harakall from Maine’s Office of Substance Abuse, and Commander Vernon Malloch of the Portland Police Department.

Although this case study is primarily focused on the conflict between Port City Music Hall and the State’s liquor inspection department, many of my findings have larger public policy implications. In particular, I am interested in placing this discussion within the larger context of developing Portland’s creative economy. Although the “creative economy” has a somewhat nebulous definition, Dr. Richard Florida, the acknowledged expert on the subject, defines it in terms of a location’s creative occupations and creative industries, including sectors such as software, R&D and design, and creative-content industries like film and music. In 1999, the estimated annual revenue of the worldwide creative sectors was \$2.24 trillion dollars. The United States is by far the world’s leading Creative Economy with \$960 billion dollars in revenue, more than 40 percent of the global total.^{vii}

Therefore, it is no wonder that Maine has paid considerable attention to the growth of it’s own creative economy in the last decade. Richard Florida has been a keynote speaker at the Blaine House to discuss Maine’s creative economy, and a number of important studies have been conducted at the state and local levels. Among these studies are *Maine’s Creative Economy: Measurement and Analysis*, *Maine’s Creative Economy Connecting Creativity, Commerce and Community* and *Maine’s Creative Economy Handbook*. Last year the Creative Portland Corporation, a quasi-municipal organization, was formed to guide and develop the city’s creative economy. It has also been determined that Maine’s creative sectors provide about 10% of the state’s wage and salary employment, and that there are now more employees in arts and culture employment than in wood products manufacturing. From 1997-2002, employment in the arts and culture sector grew by nearly 24%.^{viii}

In his book *The Rise of the Creative Class*, Richard Florida stresses that one of the most important aspects of growing a creative economy is by attracting creative workers to locations with a “street-level” culture. This creative scene may include, “coffee shops, restaurants and bars, art galleries, bookstores, and small to mid-sized theaters for film or live performance. It is not just *a* scene but many: a music scene, an art scene, a film scene, outdoor recreation scene, nightlife scene, and so on—all reinforcing one another. I have visited such places in cities across the United States, and they are invariably full of Creative Class people. My interview subjects tell me that this kind of “scene of scenes” provides another set of visual and aural cues they look for in a place to live and work.”^{ix}

Although I was unable to find significant data on the direct economic impact of Portland's music scene, I believe Richard Florida makes an eloquent case for the importance of music in his discussion of fostering *authenticity* in attracting the Creative Class. "Music is a key part of what makes a place authentic, in effect providing a sound or audio identity. Music in fact plays a central role in the creation of identity and the formation of real communities. It is hard to think of a major high-tech region that doesn't have a distinct audio identity. Technology and the music scene go together because together they reflect a place that is open to new ideas, new people and creativity. And it is for this reason that frequently I like to tell city leaders that finding ways to help support a local music scene can be just as important as investing in high-tech business and far more effective than building a downtown mall."^x

What is not usually discussed is that most music venues rely heavily on alcohol sales to stay in business, and so liquor licensing has major bureaucratic implications for the growth and development of the music scene. Furthermore, it is also not surprising that this case study not only led me to examine larger issues relating to the creative economy, but also to take note of public policy issues that extend to other areas of interest, including enforcement reform and the challenges of writing clear but flexible laws.

Therefore, each section (Economic Impact, Inspection Process & Enforcement, Legislative History) in this capstone will end with an analysis of not only the case study's central conflict, but the resulting implications on the creative economy, and public policy, in general.

It is my hope that this capstone paper will present a nuanced picture of how Maine's current liquor licensing regulations impact economic development, particularly in regard to entertainment venues, and the inherent implications for public safety. In addition it will shed new light on an issue important to the continued growth of Portland's creative economy, and suggest opportunities for policy reform.

Economic Impact

Rob Evon began his career in the music entertainment industry as a booking agent and touring manager for his friends in the "jam band" scene. Although he was enjoying a successful career in this profession, following the birth of his first child, Rob decided it would be best to start a business that would not require spending as many days out on the road. Using the business template established by the venue Higher Grounds in Burlington, Vermont, Mr. Evon chose Portland, Maine as the city to build his new music venue, Port City Music Hall. He was attracted to Portland because he felt that his venue could fill a niche left vacant by the closing of the State Theatre, and he would be able to tap into the city's strong foundation for live music. Additionally, he found Portland an ideal location to move to because of its "quality of life and livability".^{xi}

The initial investment to open the venue was \$500,000. Unlike many bars in the area that charge low-ticket prices and are driven predominantly by liquor sales, Mr. Evon's business model was to create a venue that would rely approximately half on ticket sales and half on liquor sales. He also planned to make the venue open to those 18 to 20 years old, as well as those above the legal drinking age. Mr. Evon projected that 40% of ticket sales would be driven by the 18 to 20 year old audience. In 2009, Port City Music Hall ended up

generating \$300,000 in ticket sales; true to Mr. Evon's projections, this accounted for approximately 50% of the venue's total revenue. However, because Port City Music Hall was not able to secure a liquor license that would allow the entrance of minors 18-20 years old, Mr. Evon estimates that ticket sales were decreased by \$100,000 due to this restriction.^{xii}

Without question, \$100,000 is a significant loss of revenue for a small business owner. Nonetheless, it soon became clear to me through my subsequent interviews that operating Port City Music Hall as an "18+" venue would require significantly increased expenditures and open Mr. Evon to greater liability.

In order to better understand the economic implications of running an "All Ages" or "18+" venue, I spoke with Bill Umbel, the owner of Empire Dine & Dance, a local bar/restaurant/venue. The Empire is designated as a "Restaurant" for the purposes of its liquor license, thus permitting "All Ages" shows. However, although the Empire hosts over 100 live music shows a year, Mr. Umbel guessed that they only opened about 6 – 8 shows to an "All Ages" crowd. Mr. Umbel noted that, "For 'All Ages' shows, more people are needed on staff. 'It increases my costs and it gets passed onto the customers. I'm in a business for a profit.'" He estimated that he had to spend double on staffing when hosting an "All Ages" event.^{xiii}

In fact, according to Mr. Umbel on the rare occasion that "All Ages" shows are held it is done primarily for the purpose of fostering good community relations. "All Ages shows kind of came along with the territory – it wasn't on our radar when we first started. ['All Ages' audiences] are our future clients, and they are part of the community – so I don't want to be exclusionary." However, due to the cost of holding these events, there is very little likelihood that they will become more common at the Empire.^{xiv}

Mr. Umbel indicated, the extra spending on staff is necessitated by the fact that allowing entrance of minors into an establishment that serves alcohol exposes the owners and staff to significant liability. During the Empire's first week of operation it was cited for serving a minor and was charged with a \$550 fine.^{xv} Additionally, the Maine Liquor Liability Act states that "Anyone who sells, gives, or otherwise provides liquor to a minor or visibly intoxicated person can be sued for damages caused by that person's consumption of the liquor. Repayment may be awarded for property damage, bodily injury, or death caused by the consumption of liquor served by the defendant. The limit on awards is \$250,000 plus limitless medical expenses."^{xvi} Consequently, if a bartender at the Empire was to serve an alcoholic beverage to a minor, who subsequently caused a car accident, both the server and bar could be held liable for any damage or death. Therefore, it is of serious importance that enough people be on staff to effectively monitor the minors in attendance.

However, Mr. Evon was aware of the potential hazards of operating an "18+" establishment, and was conscientious of preparing his staff to handle mixed-age patrons. His entire bar staff was required to undergo a safe server training class that educated them on Maine's liquor laws and provided best practices to avoid serving to minors or visibly intoxicated individuals.^{xvii} Furthermore, since opening, Port City Music Hall has maintained an excellent record of responsible service. When I sat down to speak with Officer Vernon Malloch, commander of Portland's uniformed police officer, he was surprised to hear that this case study focused on Port City Music Hall as it is not considered a "problem spot".^{xviii}

It is also unlikely that law enforcement monitoring would have to increase significantly if Port City Music Hall became an “18+” venue. Commander Malloch explained that although there are a number of tactics the department uses to enforce liquor laws, including going after fake IDs, supporting server training, and working with the Night Life Oversight Committee, they ultimately hope to achieve “voluntary compliance” with the bars. By educating bar and venue owners on the seriousness of liquor violations, they expect the owners to establish their own systems for creating a safe environment. The police department will also send minors into the bars to test the level of compliance. These minors are not given fake IDs, and are told to present their actual ID if asked by the bar staff. The police department always does these checks when the establishment comes up for its yearly liquor license renewal. The officers also check to make sure that the bartenders are not over-serving, that the liquor license is current, and that the premise is not at over capacity. They will also card youthful looking patrons and make sure that bar staff are not drinking. The punishments are also progressive, with each violation resulting in a greater fine. Successful bars end up taking responsible control of their liquor service, while bars with lax policies eventually end up closed or denied their renewal.^{xix}

Bill Umbel agrees that voluntary compliance is an essential part of running his business. After the Empire received their first liquor violation for serving a minor, they enforced stricter protocol for checking IDs. The Empire has since had no subsequent violations, and Bill Umbel actively works to maintain a good relationship with the police department.^{xx} Commander Malloch also noted that the bar/restaurant RiRas voluntarily chose to stop allowing minors into the establishment after 10 pm, despite being permitted to by their liquor license.^{xxi}

In short, the consequences for serving minors is serious enough that most responsible bar and venue owners will devise their own strict guidelines to ensure compliance with the law. However, by virtue of being designated a “Class A Lounge”, Port City Music Hall is greatly restricted compared to “Restaurants” or “Auditoriums”. For instance, now that the State Theatre is open and has been designated an “Auditorium”, it has the distinct advantage of being a live music venue that can admit an “All Ages” crowd, even though there are no significant differences in its ability to regulate underage drinking compared with Port City Music Hall. Commander Malloch agrees, noting that he “doesn’t see much difference at all” in regards to the enforcement capacity between the two venues.^{xxii}

Consequently, at the time of our interview, Mr. Evon was considering building a kitchen and operating Port City Music Hall as a full-time restaurant in addition to being a live music venue. In this way, like the Empire, he would be able to enjoy the benefits of a “Restaurant” license, and legally admit “18+” patrons. According to Title 28-A, a “Restaurant” is defined as follows:

“Restaurant” means a reputable place operated by responsible persons of good reputation, which is regularly used for the purpose of providing food for the public, and which has adequate and sanitary kitchen and dining room equipment and capacity for preparing and serving suitable food for the public.^{xxiii}

Additionally, in order to maintain a “Restaurant” designation, the establishment must meet minimum food income quotas:

Income from sale of food requirement. At least a minimum amount of the gross annual income must be from the sale of food for each Class A restaurant or Class A restaurant/lounge. The income from sale of food requirement is based on the population of the municipality in which the Class A restaurant or Class A restaurant/lounge is located.

- A. *In municipalities having a population of more than 50,000 persons [i.e. Portland]:*
- a. *(1) Year-round Class A restaurants or Class A restaurant/lounges must have a minimum gross annual income of \$50,000 per year from the sale of food to the public on their premises.^{xxiv}*

It is unclear if Mr. Evon will carry through on this plan. At a recent venue summit hosted by the Portland Music Foundation, he also noted the possibility of reorganizing as a nonprofit, which would allow him to apply for a different liquor license (for instance, the nonprofit SPACE Gallery currently hosts “18+” live music events).^{xxv} In any event, it strikes me as unfortunate that the best legal recourse Mr. Evon has available to him is to alter his business model to circumvent a bothersome law, and in a way that would have no discernable effect on preventing incidences of underage drinking. However, as it stands right now Port City Music Hall is unable to tap into a potentially lucrative audience, and is at a competitive disadvantage with a number of other music venues. The next question is how the inspection process created this scenario.

Analysis

The evidence from my interviews make it clear that Port City Music Hall definitely suffers an economic disadvantage by not being able to both serve alcohol and admit an “18+” crowd. In fact, Mr. Evon sometimes has to decide whether some shows would be more profitable if they were alcohol-free, allowing for a larger audience. For example, no alcohol was served at a recent OK GO show, so Port City could attract the band’s younger fans without consequence.^{xxvi} However, this is not a choice that Mr. Evon should have to make. Clearly he is aware of the liability issues concerning catering to an “18+” crowd, and he has taken precautions to train his employees and maintain adequate staffing. Furthermore, as mentioned previously, the venue is not currently seen as a “problem spot” and there would be little increase in enforcement costs if Port City Music Hall became an “18+” venue as the police department would still maintain an overall policy of voluntary compliance.

Port City Music Hall’s inability to secure its desired liquor license might also appear to be a relatively narrow problem, but I also believe that it has larger implications for the creative economy. One of the most important aspects of the creative economy is the “multiplier effect”, the idea that when people go out to spend money on art and music, they also end up spending money on other non-creative services, such as parking, babysitting, and (quite significantly) booze. In 2002, the arts & culture sector directly and indirectly supported over 18,000 jobs and more than \$545 million in wages paid. The estimated employment multiplier is 2.4.^{xxvii} Even an art space like the celebrated SPACE Gallery, which offers rotating art installations, film, and live performance, relies significantly on the sale of alcohol to maintain its business. Therefore, I would argue that the bureaucratic implementation of liquor laws has a significant effect on the health of Portland and Maine’s economy (creative and otherwise), and should receive more attention from proponents of the creative community.

Although the Empire only chooses to host a limited number of “All Ages” shows, there are also other venues that share Port City Music Hall’s desire to admit minors to their shows. For example, the Big Easy is a venues operating as “Class A Lounge”, which would like to be able to expand to serving an “18+” crowd. The Portland Music Foundation recently held a venue summit of nearly all of the city’s venue owners, and they determined the two policy issues most important to this group were increasing the number of “18+” and “All Ages” venues and extending drinking hours to 2 am. Although the primary reason for wanting these changes is obviously to increase their bottoms lines, the venue owners also realize that they have to take public safety issues into consideration, as opening a venue to minors can be a significant threat to their business in terms of liability. In the case of the 2 am drinking hours extension, the venue owners are also working on implementing a text messaging system that alerts other venue owners of intoxicated patrons that have been kicked out of an establishment and should not be served elsewhere.^{xxviii} In short, venue owners are aware that in order to advocate for policy reforms that will help grow their business, they will also have to be held accountable for maintaining public safety.

Inspection Process & Enforcement

I contacted Jeff Austin, the supervisor for the Liquor Licensing Department, to help shed some light on the liquor license application process and better understand why Port City Music Hall did not meet the necessary criteria to be designated an “Auditorium”.

Mr. Austin was initially reticent to agree to an interview, but finally conceded to answering questions by email (all other interviews were conducted in-person or by phone). He began by reviewing the procedures for submitting a license application:

First, an application must be filed with the bureau [this step was completed by Mr. Evon in April of 2008, about 8 months before he received his formal inspection]. The application must contain the following:

- A. Each applicant shall disclose the entire ownership or any interest in the establishment for which a license is sought.*
- B. Every applicant for a license for sale of liquor to be consumed on the premises where sold shall include in the application a description of the premises to be licensed and provide any other material information, description or plan of that part of the premises where the applicant proposes to keep or sell liquor as the bureau requires.*
- C. The owner or the bona fide prospective purchaser must sign the application.*

The applicant must also enclose a fee with the application for the license. Note that the fee for an “Auditorium” is \$900.00 (Class I License), while the fee for a Class A Lounge is \$2,200 (Class X License). Both types of licenses permit the sale of spirituous, vinous, and malt liquors. A filing fee of \$10 is also assessed in both cases.^{xxix}

Mr. Austin also noted that it is difficult to say how quickly an establishment will receive an inspection and license after first submitting their paperwork, as the premise licensees are also required to first secure the following certificates and permits before receiving their inspection:

1. Retailers certificate from Maine Revenue Services

2. Health License from the Department of Human Services or the Department of Agriculture.
3. Municipal business license and entertainment permits.
4. Federal I.D. Number or they provide social security number on liquor application.
5. Dance License from the State Fire Marshal's Office if dancing is going to be permitted.
6. If new construction or renovation, an occupancy permit from the municipality is required
7. If new construction or renovation a permit from the State Fire Marshal's Office would have to be applied for and issued
8. All requirements under Title 28-A, Chapter 27 have been complied with.^{xxx}

It is also not uncommon for inspectors from the department to conduct a pre-inspection of an applicant's premises; However, all construction plans must be reviewed and approved by the State Fire Marshal's Office. The liquor inspectors can only offer advice as to whether the proposed set up would or would not be compliant with the license requirements for the license applied for. Upon receiving the application, all applications are reviewed for accuracy by the office associate assigned to reviewing applications when they are received. If the application is missing information or is incomplete the application is returned with a letter stating the reason for its return. The applications are then assigned to the inspector responsible for the area the applicant is located in. Inspectors may contact the applicant if they have questions or concerns about the application and conduct a short interview or schedule an appointment to visit the location for an inspection. Due to budget constraints and shortage of personnel the inspectors are in the office one day per week. The department has 5 inspectors to cover the entire state and inspections are scheduled as soon as possible.^{xxxi}

Jeff Austin cited this shortage of personnel as the main reason for why Port City Music Hall did not receive advanced feedback on their application. In my interview with state senator Justin Alford, who has taken a pragmatic approach to the conflict stating that "both sides have a solid case", I asked him if he thought pre-inspection feedback should be mandatory; he answered that pre-inspection would be a great thing, but questioned how much it would cost to make that happen.^{xxxii} Representative Ann Haskell also indicated that she received a call from Port City Music Hall indicating that they felt the liquor inspectors had not been responsive. She contacted the liquor inspection department and they responded by providing a series of "conversations and dates". Based on this documentation, she felt that Port City Music Hall had been given appropriate information about what they had been missing. Representative Haskell also noted that, "My first approach is always to support the department. If I have to make a snap judgment, I will side with the department."^{xxxiii}

When posed with the question why Port City Music Hall received a "Class A Lounge" license instead of the "Auditorium" license they applied for, Mr. Austin simply responded, "Port City Music Hall did not meet the requirements under Title 28-A, Chapter 43, Subchapter 2 entitled "Specific License Requirements" and Title 28-A Section 2 Subsection 15, "licensed establishment" definitions."^{xxxiv}

Regarding "Auditoriums", Chapter 43, Subchapter 2 reads in full as follows:

1. **Issuance of licenses.** *The bureau may issue licenses under this section for the sale of spirits, wine and malt liquor to be consumed on the premises to auditoriums, as defined in section 2, subsection 15, paragraph B.*
2. **No sales at events for children.** *No liquor may be sold at an auditorium at any event primarily involving primary or secondary school children.*
3. **Conditions on sales.**^{xxxv}

As mentioned previously, the complete definition of an “Auditorium” as written in Title 28-A, Section 2 Subsection 15 is as follows:

“Auditorium” means any commercially operated facility designed or used for the gathering of an audience for speeches and live performances of theater, music, dance or other performing arts, which charges a fee and which has adequate facilities for the sale and consumption of liquor.”

Mr. Austin also provided examples of venues that have been issued Auditorium licenses, including:

- St. Lawrence Arts and Community Center, Portland
- Opera House at Boothbay Harbor, Boothbay Harbor
- Strand Theatre, Rockland
- One Longfellow Square, Portland
- Criterion Theatre and Arts Center, Bar Harbor^{xxxvi}

What makes these venues different than Port City Music Hall? In my conversations with both Rob Evon and Justin Alfond, they stated that the liquor inspector did not consider Port City Music Hall an Auditorium because it did not have any “fixed seating”. However, there is nothing in the actual law that suggests that “fixed seating” is a necessary component of an “Auditorium”. Mr. Austin also made no mention of “fixed seating” being a prerequisite to receiving an “Auditorium” designation.

In our interview, it became clear that Representative Haskell was under the impression that Port City Music Hall was denied their “Auditorium” designation because of the “Separation issue: The ability to differentiate mixed [aged] crowds.”^{xxxvii} However, in my subsequent interview with Commander Vernon Malloch he noted that there are no specific laws regarding how a venue handles separation; for example, neither the state or the city requires that bars wristband their drinking-age patrons. This is simply a discretionary practice by most venues with mixed audiences to help them better monitor their own compliance.^{xxxviii}

Unfortunately, despite the ambiguous nature of the definition, I found no case law regarding the definition that would offer any further clarity. In fact, Mr. Austin notes that in the 22 years that he has been with the department, he has not heard of or seen an applicant appeal the department’s decision.^{xxxix} Nonetheless, the process for appeal is outlined in Title 28-A:

If an application is approved by the municipal officers or the county commissioners but the bureau finds, after inspection of the premises and the records of the applicant, that the applicant does not qualify for the class of license applied for, the bureau shall notify the applicant of that fact in writing. The bureau shall give the applicant 30 days to file an amended application for the appropriate class of

license, accompanied by any additional license fee, with the municipal officers or county commissioners, as the case may be. If the applicant fails to file an amended application within 30 days, the original application must be denied by the bureau. The bureau shall notify the applicant in writing of its decision to deny the application including the reasons for the denial and the rights of appeal of the applicant.

5. Appeal to District Court. *Any person or governmental entity aggrieved by a bureau decision under this section may appeal the decision to the District Court within 30 days of receipt of the written decision of the bureau.^{xi}*

When I asked Mr. Evon if he had considered appealing the decision, he said he had, but it would have been economically infeasible to do so. With the venue just days away from opening, there was simply no capital left to pursue legal action. Mr. Evon estimated that it would require \$20,000 in legal fees to pursue an appeal. Instead, the top priority was simply opening the venue, even if it meant forsaking the originally desired liquor license.^{xii}

In my conversation with Godfrey Wood, he noted that the Portland Regional Chamber usually found “the state-side of permitting to be pretty straightforward”, and more of their advocacy was spent on attempting to re-draft city ordinances. “In general, it is very time-consuming to get a business in Portland.”^{xiii} However, the opposite seems to be the case in this incidence; both Rob Evon and City Councilor Marshall indicated that Portland wanted Port City’s business, and the city issued multiple permits to account for every possible license they might receive from the liquor inspector.^{xiii} Nonetheless, despite cultivating a number of allies in the community, Rob Evon saw no effective path around the liquor inspector’s decision. The inspector was the only person in the state with the final authority to determine what an “Auditorium” is, and he wasn’t going to change his mind.

Analysis

The limited number of inspectors notwithstanding, some sort of system or pre-inspection of improved communication would likely have helped Port City Music Hall address its liquor license problem much earlier. It also strikes me as somewhat problematic that no one has ever appealed a liquor licensing decisions, which seems to be a result of the financial risk of such an action. However, I wouldn’t necessarily advocate for the institution of pre-inspection or any reform to the appeal process without more information on the cost and challenges of such reform.

As far as implications for the creative economy at-large, it is simply worth noting that many of the bureaucratic institutions upon which the growth of the creative economy rely do not always have compatible agendas. In this case study, the city of Portland was very eager to do everything it could to support Rob Evon’s business as it was identified as an important creative enterprise, but this enthusiasm was not shared with the state-level bureaucracy. In some bureaucratic areas, like housing, advocates for the creative economy have made strides in aligning the aspects of the agencies mission with the goal of fostering a vibrant creative community. For instance, Maine’s housing finance agency, MaineHousing, has established a strong link between economic development and housing, and there exists an equally strong link between affordable housing and the development and growth of the creative economy.^{xiv} As I argued earlier, liquor licensing has a relatively small, but still meaningful impact on the creative economy, and an effort should be made to reach out to

the State's liquor inspection department and determine if a balance can be struck between their current mission and the larger goals of the creative economy.

However, the most important policy issue related to the inspection process is the vague nature of the liquor licensing laws, and how much discretion the inspectors have to formulate their own interpretations of the "licensed establishment" definitions. A brief literature review of the advantages vs. disadvantages of flexible laws and regulations tends to come out in favor of applying loose guidelines for agencies. "More flexible approaches to regulation have many advantages. More flexible approaches allow implementers to move beyond compliance to identification and internalization. Imposed decisions increase resistance and delay and reduce the quality of decisions. They also negatively affect the dispositions of implementers, who then engage in routine and mechanical operationalization."^{xlv}

Therefore, I would not suggest a complete overhaul of Maine's liquor laws, nor do I think the definition for an "Auditorium" needs to be changed or new definitions added. If anything, it seems that one of the main problems is that the power to make the final decision lies in the hands of a single inspector. I believe it could be beneficial if a more formal review process was instituted in which the inspector was required to submit their exact reasoning for interpreting a liquor license definition in a particular way. This view is succinctly summed up in the conclusion of the article "Bending the Rules: Flexible Regulation and Constraints on Agency Discretion": "The problem of the perverse effects of decisionmaking norms, especially in the political arenas, suggest the solution lies in including representatives of various perspectives in the internal decisionmaking process of the agencies. To include such representatives in a meaningful, rather than pro-forma manner, however, requires ex-post review of agency decisions. Such review, moreover, is best accomplished by allowing courts to review agencies' reasons for their decisions. Ex-post review does add costs to the decisionmaking process. The analysis in this article suggests, however, that reformers of regulation would spend their time more productively trying to structure judicial review to minimize such costs than advocating for agencies to have carte blanche to ignore rules and not have to answer for particular regulatory decisions they make."^{xlvi}

Legislative History

The "Auditorium" designation was first created in 1986 by the 112th Legislature through LD 2301. The Statement of Fact for the bill reads as follows:

The purpose of this bill is to provide a liquor license for public and private auditoriums which are not owned by a nonprofit corporation or a municipality or other governmental entity. Currently, auditoriums used for performing arts may sell liquor only if they are owned and operated as a nonprofit corporation. [...] This bill defines auditorium in regard to the most common uses of an auditorium and makes them eligible for license to sell beer, wine and spirituous liquor. Sales of liquor may not be made in auditoriums at an event which is directed at children up through the secondary level. In addition, sales may not be made in the audience seating area of the auditorium. (This final condition on sales was repealed in 1995)^{xlvii}

Based on the fact that the “Auditorium” license was created specifically for private business, it is somewhat ironic that Port City Music Hall, an independently owned business, is considering restructuring as a nonprofit in order to obtain a preferable license.

However, probably the biggest recent change to the liquor inspection process took place in 2003. Prior to that year, liquor licensing was the domain of the Bureau of Liquor Enforcement, comprised of officers with the power to issue civil, administrative, and criminal violations. Governor Baldacci eliminated the Bureau in 2003 in an effort to save the state \$1.5 million in salary and expenses over two years by doing away with 20 positions previously held by liquor inspectors. These officers were replaced with three civilian liquor enforcement inspectors with the authority to issue licenses and enforce some liquor laws but who have no power to arrest. The task of enforcing criminal liquor violations was redirected to local and state police.^{xlvi}

In my interview with Frank Lyons, a former officer at the now defunct Bureau of Liquor Enforcement, he stressed that the new system of liquor inspection has greatly reduced enforcement capacity. There is no longer one entity with full authority; although there are qualified inspectors, they cannot enforce civil and criminal laws. At the same time, the local police only have authority to enforce 13 particular criminal violations, the rest they must refer to liquor licensing. Consequently, Mr. Lyons believes that more than ever “control happens at the initial process” regarding licensing. Since the state inspectors aren’t out nights and weekends, and have limited capacity to monitor establishments, Mr. Lyons suggested that they are more likely to set stricter guidelines from the outset. However, Mr. Lyons noted that “enforcement is the backbone of any good initiative”, and enforcement has declined as a result of the elimination of the Bureau of Liquor Enforcement.^{xlix}

Commander Vernon Malloch of the Portland Police Department agrees that enforcement capacity has suffered since 2003. Although he noted that, even before 2003 there were very few liquor enforcement agents to cover the state (one agent was responsible for all of Portland and southern Maine), but they would work in closer collaboration with the local police department. The local police would carry out their own liquor inspections, but would often be joined by the liquor inspection agent. The police would also make recommendations regarding licensing, but that has ended as well; the Portland police department had no input on dictating what type of license Port City Music Hall received. Furthermore, Commander Malloch noted that there are some laws that are simply no longer being enforced, because the local police don’t have the authority, and the liquor inspectors don’t have the manpower to perform regular checks. For instance, the local police do not have the authority to audit “Restaurants” to ensure that they are maintaining their income from food quotas. Furthermore, Commander Malloch also stated that no one is monitoring the Tax ID stamps to determine if bars are purchasing their liquor from the Maine State Liquor Store.^l

According to Maryann Harakall, the Maine Office of Substance is still “digging out the data” to determine how much money was saved by eliminating the Bureau of Liquor Enforcement and what effect it has had on compliance and violation rates.^{li} Although the overall effects of the change in liquor enforcement remain inconclusive, data from the MYDAUS (Maine Youth Drug and Alcohol Use Survey) indicates that underage drinking has declined noticeably since 2000. In 2000, 40.2% of 9th to 12th graders self-reported using alcohol within the last 30 days, by 2008 that percentage had decreased to 35%, which followed from a steady decline over the intervening years. In 2000, 23% of 9th to 12th

graders reported that they had engaged in binge drinking within the last 2 weeks, by 2008 that number had declined to 18.2%.^{lii} Although these numbers are not broken down by city, or by the physical location where underage drinking takes place, City Councilor David Marshall noted that all the data the Council has received has indicated that underage drinking is on the decline in Portland. He also stated that, "There has been a strong focus on limiting access. Police had successful sting operations going on during the summer of 2007."^{liii} Furthermore, Commander Malloch noted that significantly more underage drinking violations happen at off-premise sites (e.g. liquor stores) than on-premise sites such as entertainment venues.^{liv}

Nonetheless, underage drinking is a serious public safety issue for any community and Erica Schmitz of 21 Reasons lays out a number of legitimate concerns regarding the presence of minors in venues where alcohol is served in her response to an April 23, 2007 iHerald article titled "Nightlife":

"Any Portland bar owner will tell you: When minors are allowed into bars, preventing alcohol from reaching underage patrons is physically and logistically impossible. As Bull Feeney's owner Doug Fuss pointed out in the article, "Say you armband someone... there are plenty of other people here who can hand them a drink.

"This is a problem. We know more today about just how harmful alcohol can be to an adolescent's developing brain. For example, we know that youth who drink before the age of 15 are four times more likely to become alcohol dependent than those who wait until age 21. Those who drink before the age of 17 are twice as likely to become alcohol dependent.

"According to the Maine Office of Substance Abuse, alcohol abuse costs our state more than \$30 million dollars per year in direct damages. [...] Alcohol abuse starts with underage drinking. We need to do whatever we can to prevent the devastation that underage drinking causes youth, their families, and the community at large.

"In the past decade, we've learned from national studies that reducing access is essential for prevention. Our own experience in Maine confirms it. According to the MYDAUS, teens who report alcohol is "easy" to get are four times more likely to drink.

"Where do teens get alcohol? For younger teens, it's usually a home liquor cabinet or refrigerator. For older teens, more sources become available: older friends and family members, and retailers. Inviting teens to party in a bar atmosphere provides opportunities for them to expand their social networks in the wrong direction – with over-21 drinkers. Even if it were possible for bar security to prevent alcohol from being passed along to underage patrons, teens who attend these functions are making older friends, substantially increasing their access to alcohol outside of the club environment."^{lv}

It is worth noting that the iHerald article was about the "All Ages" venue The Station, which is now under new management and operates as a "21+" bar only. Over the years, 21 Reasons and other alcohol safety advocacy groups have had a number of legislative victories in establishing new laws to help decrease underage drinking. For instance, in an effort to reduce the glamorization of alcohol, a premise may have only one outside sign advertising liquor.^{lvi} Furthermore, the optional safe server training that all Port City Music Hall bar staff members completed before the opening of the venue has now been made a mandatory requirement (at the discretion of the municipalities) effective September 1, 2010.^{lvii}

Although liquor laws are regulated at the state-level, Portland has also instituted a number of ordinances to gain some measure of control over the bar scene. For instance, the entertainment dispersal ordinance prevents two entertainment venues from operating within 100 feet of each other. There is also currently much debate over the need for new noise ordinance requirements, which would subject entertainment venues to maintaining lower decibel levels.^{lviii}

Jo Morrissey noted in our interview that 21 Reasons advocated for the entertainment dispersal ordinance as another tactic to protect against the oversaturation of bars in the community.^{lix} However, City Councilor David Marshall, who opposes the ordinance, is concerned with its sometimes chilling effect on arts and culture; just last summer the Council had to issue a special permit for the performance of a Shakespearean Theater troupe, because their chosen venue was in conflict with the entertainment dispersal ordinance. Councilor Marshall states that he would prefer to deal with bars and venues on a case-by-case basis as opposed to subjecting them to blanket provisions.^{lx}

As mentioned previously, the Portland Music Foundation held a “venue summit” on September 16th that included the participation of nearly every live music venue owner in Portland. A discussion was held on what were the important issues facing the city’s music scene, and nearly everyone in attendance agreed that the lack of “18+” and “All Ages” venues was one of the most pressing concerns. However, Justin Alfond, who was in attendance in both his capacity as a state senator and co-owner of Bayside Bowl, indicated that it would be difficult to gain traction on this issue in the legislature if the problem was perceived as being limited to the Portland-area. A suggestion was also offered that a partnership could be formed among multiple venues in which they would take turns on providing alcohol-free “All Ages” shows on a rotating basis. This suggestion was greeted enthusiastically and the Portland Music Foundation is currently working on turning that idea into a reality.^{lxi}

If this project moves forward, it would likely help establish some common ground between the music community and advocacy groups like 21 Reasons. In our interview, Jo Morrissey remarked, “It is really sad that the only venue open [for all “All Ages” crowds] is a bar. I understand that you want to increase your bottom line as much as possible. But there is always the option of offering alcohol free entertainment.”^{lxii} However, this initiative to offer alcohol-free entertainment does not address Mr. Evon’s original complaint against the ambiguity, inflexibility, and seeming unfairness of Maine’s liquor laws. Although a detailed examination of liquor licensing laws across other states would be too exhaustive for the purposes of this case study, a brief examination of Vermont and New Hampshire’s liquor licensing laws reveals some of the potential problems with Maine’s laws. For instance, Vermont only has four classifications of liquor licenses for on-premise sites (restaurant, cabaret, hotel, club), while Maine has well over a dozen establishment classifications distinguishing everything from an airport bar, to a bowling alley, to a performing arts center, each with different regulations regarding their licensing. New Hampshire permits 18 year-olds into every type of premise they license (although they can obviously only purchase and consume alcohol if of legal age), and an entertainment venue located there would never be faced with Rob Evon’s problem.^{lxiii}

Therefore, it is no wonder that Mr. Evon remarked during our interview that once he had realized he was not going to receive his “Auditorium” license he asked himself, “Why am I doing this in Maine?”^{lxiv}

Analysis

Anytime a business owner sighs, “Why am I doing this in Maine?” it suggests that we should take a closer look at the kind of environment we are creating for business in our state. Again, I am hesitant to demand sweeping changes to the laws, because much more information is needed on both other state’s practices and Maine’s own economic and public safety data. For instance, it is clear that there is a lack of in-depth statistical knowledge on underage drinking in Portland venues, and their overall economic impact.

In regards to the creative economy, I’d like to see more information on not just attracting creative people, but on attracting (and maintaining) *young* creative individuals. In a state that has suffered so-called “brain drain” for a number of years, almost everybody I talked to spoke of the importance of creating a community that provides plenty of engaging activity for youth. As Godfrey Wood stated, “If you are not welcoming to young people here, they will leave”.^{lxv} Therefore, I think more attention should be paid to creating safe and engaging culture for youth in Portland. Advocacy groups like 21 Reasons and Portland Music Foundation need to find a balance and common ground between promoting cultural interactivity and public safety.

However, the most important conclusion to draw from this section is the apparent breakdown in communication between the State liquor inspectors and the local enforcement responsible for the day-to-day monitoring of liquor violations. This is an issue that extends far beyond Port City Music Hall, and the creative economy. With responsibilities divided, liquor inspection is simply not as strong as it was in the past, not only in regards to monitoring underage drinking, but also in preventing corruption such as false income from food reporting and illegal purchases of alcohol from out-of-state.^{lxvi} It will be interesting to see what sort of data the Office of Substance Abuse returns regarding how much money was saved by cutting the Bureau of Liquor Enforcement, because right now the consensus from my research suggests that enforcement capacity has noticeably declined as a result of that cutback.

Conclusion

Port City Music Hall’s inability to operate as an “Auditorium” licensed establishment has had a negative impact on its economic success. The fact that Senator Justin Alford, Representative Ann Haskell, and supervisor Jeff Austin all offered different interpretations for why Port City Music Hall was denied the license speaks to the ambiguous nature of the definition. In our interview, Rob Evon suggested that a new license classification could be created for venues “operating a box office”^{lxvii}. However, as Senator Alford noted, it is unlikely that such a narrowly applicable revision to the law would be able to gain traction with the legislature.^{lxviii} Nonetheless, my research has revealed to me that problems with Maine’s liquor licensing laws extend far beyond conflicting interpretations of an “Auditorium”. More information is needed on the impact of the elimination of the Bureau of Liquor Enforcement in 2003, and greater communication between state inspectors and

local police should be restored. Now could be the time to reevaluate these roles and offer new recommendations for appropriate licensing and enforcement practices.

You do not need to look to Vermont or New Hampshire to realize that Port City Music Hall's situation is unfair; you just need to look down the street to the State Theatre. Two venues with similar business models and enforcement capacity each hold two different licenses with different privileges. In addition, the fact that Port City Music Hall has so far been able to operate without violations and has not been identified as a "problem spot" by the Portland Police Department indicates that it would have an easy transition to an "18+" venue.

21 Reasons makes valid points about the potential hazards of allowing minors in bar settings, but neither they, nor the Office of Substance Abuse, nor the Portland Police Department maintain any data on the number of underage drinking violations in entertainment establishments. 21 Reasons should continue to work to pass legislation that discourages underage drinking, such as mandatory safe server training for bar staff, but there is not enough evidence that "18+" music venues pose a serious threat to public safety. On the other hand, it is clear that denying Port City Music Hall its "Auditorium" license has posed a threat to the well-being of its business.

Although I hope to eventually see legislative action in regards to licensing definitions and communication practices between state inspectors and local police, I believe community action is the first step to creating a better environment for "All Ages" entertainment venues in Portland. If the Portland Music Foundation and the city's venues make a sincere commitment to offering alcohol-free shows for "All Ages" crowd, I believe they can establish common ground with city government, advocacy groups like 21 Reasons, and law enforcement. The next step will be to make laws that allow these businesses to operate on a level-playing ground and guide them in making safe serving practices a cornerstone of their business. As Frank Lyons noted in our interview, liquor licensing laws are there "not to stymie business, but to enhance business by protecting against liability."^{lxix}

Although the reevaluation of Maine's liquor licensing laws will obviously be an ongoing process involving a number of stakeholders, I would like to conclude by offering some immediate recommendations:

- While keeping cost in mind, some sort of formal system of liquor pre-inspection should be instituted for establishments waiting to receive a liquor license. This does not necessarily require sending out a liquor inspector in-person. For instance, a phone conversation could be conducted between an inspector and the establishment owner in which the liquor application is reviewed, and the inspector can address any early concerns.
- A detailed record should be kept of why a liquor inspector granted an applicant a particular license. This record should be made publicly available. This will allow other license applicants to see what kinds of licenses are issued to various establishments. It might even allow courts to periodically review the licensing decisions and determine if the liquor licensing laws are being applied in a fair and accurate manner.
- A representative of the local police should be present on the inspection date. As local enforcement is responsible for actually enforcing the liquor

laws on a day-by-day basis, they should be able to offer their informal input on liquor licensing decisions at the very least.

- Separation strategies (e.g. wristbands for underage patrons, separate entrance for minors) are currently left up to the discretion of the establishments. It could be effective to make some separation strategies mandatory, or print a guidebook on effective ways to maintain separation.

Finally, there is a significant lack of data on a number of important issues: including incidences of underage drinking in entertainment establishments, the overall economic impact of entertainment venues in Portland, and the information on the cost-savings of the elimination of the Bureau of Liquor Enforcement. So, although I almost hate to do it, I must end this capstone with the oldest of academic clichés: *more research is needed*.

ENDNOTES

Introduction

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- ⁱⁱ Maine Revised Statutes, Title 28-A, Section 1069-A.
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